IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

Central Excise Reference No. 1 OF 2000.

Commissioner, Central Excise & Customs .vs. M/s. Harivishnu Packaging Ltd. & another.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrars orders.	Court's or Judge's orders.

CORAM: J.P. DEVADHAR & B.P. DHARMADHIKARI, JJ.

DATED : JUNE 27, 2007.

Heard Mr. S.K. Mishra, learned Advocate for the appellant and Mr. M.G. Bhangde, learned Senior Counsel for the respondent no.1.

The Commissioner of Central Excise, Nagpur has filed this reference application (wrongly numbered as Central Excise Reference) under Section 35-H(1) of the Central Excise Act, 1944.

In this case, the assessee manufactured H.D.P.E. Tapes from H.D.P.E. Granules. The assessee claimed Modvat credit on H.D.P.E. Granules used in the manufacture of H.D.P.E. Tapes on the ground that the tapes are classifiable under Chapter 39 of the Central Excise Tariff. The Assistant Commissioner denied the facility of Modvat credit on the H.D.P.E. Granules on the ground that the H.D.P.E. Tapes merited classification under

Chapter 54 and, therefore, the Modvat credit was not available in terms of notification No. 177/86.

On appeal filed by the respondent assessee, the Collector (Appeals) relying upon the decision of the M.P. High Court in the case of Raj Pack Well held that the H.D.P.E. Tapes are classifiable under Chapter 39 and not under Chapter 54 of the Central Excise Tariff.

On further appeal filed by the revenue, the CEGAT upheld the order of Commissioner (A) by referring to the Board's clarification letter dated 24.9.1992 accepting the classification of the goods in question under Chapter 39 of the Central Excise Tariff. The Tribunal rejected the contention of the revenue that the Board's letter dated 24.9.1992 was prospective in nature.

The finding recorded by the Tribunal does not give rise to any substantial question of law because the order passed by the Commissioner (Appeals) accepting the classification of goods proposed by the respondent assessee relates back to the date on which the dispute arose.

In this view of the matter, we do not find any merit in the application and the same is hereby rejected.

JUDGE. **JUDGE.**

J.